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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,393	11/20/2003	Hans Horth	GMH/413/US	9751
2543	7590	07/20/2006	EXAMINER	
ALIX YALE & RISTAS LLP 750 MAIN STREET SUITE 1400 HARTFORD, CT 06103			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/718,393

**Applicant(s)**

HORTH ET AL.

**Examiner**

Frederick C. Nicolas

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 14-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/13/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species A: Figures 1-3, claims 1-7,14-21 in the reply filed on 4/27/2006 is acknowledged. The traversal is on the ground(s) that the asserted species are merely alternative embodiments with optional features. This is not found persuasive because the noted species of claimed invention are clearly not related in terms of their modes of operation. For example, in the elected species of Figures 1-3, the discharging device requires a cartridge (1) with no grippers. On the other hand, in the species of Figures 5-6, the discharging device requires that the cartridge fitted onto a pair of grippers (18). Clearly, there exist unrelated features among the species of claimed invention, which will require a separate search area for each species. The requirement is still deemed proper and is therefore made FINAL.

2. Claims 8-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/27/2006.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-7,14-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

I- Regarding claims 1 and 21, the phrase "in particular" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

II- As to claim 1, line 7, the phrase "can be" renders the claim indefinite, because "can be" can be interpreted as unsure. It is suggested that the phrase "can be" be deleted.

### ***Claim Objections***

5. Claim 1 is objected to because of the following informalities: in claim 1, line 5, it is suggested that the claimed limitation "the cap being movable" is changed to --the cap is moved-- to prevent the functional recitation; line 7, it is suggested that the pronoun "they" be changed to the proper claimed subject matter. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Ernst 4,771,919.

Ernst discloses a device (10) for mixing and dispensing multi-component compositions, which comprises a cartridge (12) with at least two cylindrical chambers (14,16) arranged in parallel for receiving the components and in each case a plunger for

discharging the components (col. 3, ll. 5-23), an outlet opening (17,19), a transverse wall (15) disposed between the outlet openings, a cap (50) having an outlet tube, a mixing helix (36) disposed within the outlet tube, wherein the mixing helix is fastened to the transverse wall as seen in Figure 1.

***Allowable Subject Matter***

8. Claims 1-7,14-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Keller 6,135,631, De Laforcade 5,152,432, Gangwisch 3,200,995, Gross et al. 6,398,077, Keller 5,228,599, Penn et al. 4,846,373, Jacobsen et al. 5,443,183 and Loredó 3,876,118 disclose other types of device for mixing and dispensing multi-component compositions.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
July 13, 2006



7/14/06  
Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754